

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DERRICK REAVES,

Petitioner

v.

C-1-02-100

JAMES ERWIN,

Respondent

ORDER

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 13) and upon respondent's objections thereto (doc. no. 14).

Upon careful consideration of the respondent's objections, and upon conducting a *de novo* review of the record, especially in light of respondent's objections, the Court finds that respondent's contentions have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE HEREIN** his Report and

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Recommendation dated April 8, 2004. Petitioner's claim alleged in Ground Four of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (doc. no. 1, p. 6) is **DENIED**.

The March 18, 2003 Order (doc. no. 8) adopting the Magistrate Judge's Report and Recommendation to dismiss Grounds One through Three is **VACATED**. The March 18, 2003 Order was not a final judgment in this case as it did not determine all the claims of the parties. Therefore, pursuant to rule 54(b) of the Federal Rules of Civil Procedure, it is subject to revision at any time before the entry of judgment adjudicating all of the claims of the parties.

This matter is **RECOMMITTED** to the United States Magistrate Judge pursuant to 28 U.S.C. § 636 for further proceedings according to law including but not limited to the request of respondent for a stay.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court